

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TANYA DENNIS,

Plaintiff,

v.

WACHOVIA BANK, FSB, et al.,

Defendants.

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No. 10-01596 CW

ORDER DENYING  
PLAINTIFF'S  
APPLICATION FOR A  
TEMPORARY  
RESTRAINING ORDER

On May 3, 2010, Plaintiff Tanya Dennis moved ex parte for a temporary restraining order to rescind and set aside the April 30, 2010 trustee sale of her property located at 2027 Woolsey Street, Berkeley, CA. Plaintiff asserted that Defendant Wachovia Mortgage conducted this sale in violation of a temporary restraining order issued on April 7, 2010 by Judge Roesch of the Alameda County Superior Court. The Court denied Plaintiff's motion because she did not make a sufficient showing of immediate and irreparable harm to justify granting a temporary restraining order without first offering Defendant an opportunity to be heard. However, the Court ordered Defendant to respond to Plaintiff's motion. After considering the parties' papers, the Court denies Plaintiffs' application for a temporary restraining order.

BACKGROUND

The factual background in this case is not clear. From the

1 complaint and the documents submitted by Defendant Wachovia, it  
2 appears that World Savings Bank made two loans to Plaintiff that  
3 were secured by separate deeds of trust. Defendant Wachovia  
4 Mortgage, now a division of Wells Fargo Bank, was formerly known as  
5 World Savings Bank. The first trust deed secured repayment of a  
6 loan for \$406,000. According to Defendant's records, Plaintiff has  
7 not made a payment on that loan since April, 2009. The second  
8 trust deed secured repayment of an Equity Line of Credit (ELOC),  
9 and it was this loan that lead to the foreclosure of Plaintiff's  
10 home. It is not clear when, but as some point, Plaintiff allegedly  
11 stopped paying on the ELOC. On December 17, 2009, Cal-Western  
12 Reconveyance Corp. recorded a notice of default concerning the ELOC  
13 and election to sell Plaintiff's house. On March 18, 2009,  
14 Plaintiff received a notice of trustee's sale which stated that her  
15 property would be sold on April 8, 2010.

16 On April 6, 2010, Plaintiff filed her complaint in Alameda  
17 County Superior Court and an application for a temporary  
18 restraining order to prevent Defendant from conducting the  
19 foreclosure sale of her home. Plaintiff alleges that she was  
20 misled into signing loan documents because her lender did not  
21 provide adequate disclosures concerning the details of the loan.  
22 On April 7, 2010 the Superior Court issued a temporary restraining  
23 order and order to show cause. The court ordered Defendant to  
24 "refrain from completing a foreclosure sale of the premises  
25 commonly known as 2027 Woolsey Street, Berkeley, California until  
26 this matter may be considered at the Order to Show Cause . . . ."  
27 The court set a hearing date of April 21 for an order to show cause  
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1 as to why a preliminary injunction should not be entered.

2 On April 14, Defendant removed the case to this Court. On  
3 April 20, the Superior Court took Plaintiff's motion for a  
4 preliminary injunction off of its calendar because the case had  
5 been removed. On April 30, Defendant commenced the foreclosure  
6 sale of Plaintiff's house, wherein Defendant purchased the home for  
7 \$27,020.84.

#### 8 DISCUSSION

##### 9 I. Validity of Foreclosure Sale

10 Plaintiff challenges the validity of Defendant's foreclosure  
11 sale of her home. She argues that the sale was made in violation  
12 of the state court's temporary restraining order issued on April 7.  
13 Under California law, the maximum life of a temporary restraining  
14 order, pending an order to show cause hearing, is fifteen days from  
15 the date it was issued, or twenty-two days if Plaintiff can  
16 establish good cause for such an extension. Cal. Code Civ. Proc.  
17 § 527(d)(1). Although the case was removed on April 14, the  
18 temporary restraining order issued by the state court remained in  
19 full effect. See 28 U.S.C. § 1450 ("Whenever any action is removed  
20 from a State court to a district court of the United States . . . .  
21 All injunctions, orders, and other proceedings had in such action  
22 prior to its removal shall remain in full force and effect until  
23 dissolved or modified by the district court.") The "'full force  
24 and effect' provided state court orders after removal of the case  
25 to federal court [is] not intended to be more than the force and  
26 effect the orders would have had in state court." Granny Goose  
27 Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers

1 Local No. 70 of Alameda County, 415 U.S. 423, 436 (1974). Thus,  
2 "An ex parte temporary restraining order issued by a state court  
3 prior to removal remains in full force after removal no longer than  
4 it would have remained in effect under state law, but in no event  
5 does the order remain in force longer than the time limitation  
6 imposed by [Federal Rule of Civil Procedure] 65(b), measured from  
7 the date of removal." Id. at 439-440.

8 In the present case, there is no evidence that Plaintiff  
9 established good cause to extend the length of the temporary  
10 restraining order; therefore, the order expired April 22, fifteen  
11 days after it was issued. Accordingly, Defendant's April 30  
12 foreclosure sale of Plaintiff's home did not violate the temporary  
13 restraining order.<sup>1</sup>

14 II. Temporary Restraining Order

15 "The standard for issuance of a temporary restraining order is  
16 the same as that for issuance of a preliminary injunction."  
17 Burgess v. Forbes, 2009 WL 416843, at \*2 (N.D. Cal.). To obtain a  
18 preliminary injunction, the moving party must "establish that he is  
19 likely to succeed on the merits, that he is likely to suffer  
20 irreparable harm in the absence of preliminary relief, that the  
21 balance of equities tips in his favor, and that an injunction is in  
22 the public interest." Winter v. Natural Res. Def. Council, Inc.,

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24 <sup>1</sup>Plaintiff also argues that the foreclosure sale of her home  
25 should be invalidated because she was not properly notified that  
26 the case was removed to federal court. She claims that she did not  
27 learn that the case was removed until April 26, which was twelve  
28 days after Defendant filed its notice of removal. Even if  
Plaintiff's assertion is true, it does not affect the expiration of  
temporary restraining order on April 22.

1 \_\_\_\_ U.S. \_\_\_\_, 129 S. Ct. 365, 374 (2008).

2 Plaintiff argues that Defendant has no standing to foreclose  
3 on her house because it does not presently own or possess the  
4 promissory note secured by the deed of trust. However, possession  
5 of the note does not necessarily affect the validity of a non-  
6 judicial foreclosure sale. Rogue v. Suntrust Mortgage, Inc., 2010  
7 WL 546896, \*3 (N.D. Cal.) ("Uniformly among courts, production of  
8 the note is not required to proceed in foreclosure and similarly no  
9 production of any chain of ownership is required."). Further,  
10 Defendant has submitted a declaration stating that it possesses the  
11 note. Although the balance of the harm tips toward Plaintiff, she  
12 has not presented the requisite showing of meritoriousness required  
13 for the Court to issue an injunction. Plaintiff's request for a  
14 temporary restraining order is therefore DENIED. If Plaintiff's  
15 request has not become moot by the foreclosure sale, Plaintiff may  
16 file a regularly noticed motion for a preliminary injunction. See  
17 N.D. Cal. Civ. R. 7-2.

18 III. Removal

19 At the same time that Plaintiff moved for a temporary  
20 restraining order, she filed a "Motion to Void Removal of Case from  
21 Superior to District Court Due to Improper Notice of Service." The  
22 Court deemed this motion to be a motion to remand. Plaintiff does  
23 not challenge the jurisdiction of this Court; rather, she argues  
24 that she was not properly served with the removal papers.

25 Title 28 U.S.C. § 1446(d), which governs the procedure for  
26 removal of a case from state court, provides, "Promptly after the  
27 filing of such notice of removal of a civil action the defendant or  
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1 defendants shall give written notice thereof to all adverse parties  
2 and shall file a copy of the notice with the clerk of such State  
3 court, which shall effect removal and the State court shall proceed  
4 no further unless and until the case is remanded." Section 1446(d)  
5 does not require "formal" or "personal" service of a notice of  
6 removal upon a plaintiff; it merely requires "written notice."  
7 Here, Defendant filed a certificate of service with this Court on  
8 April 15, 2010 stating it had served the notice of removal upon  
9 Plaintiff by mail on the same date. Docket No. 4.

10 Plaintiff has failed to identify any procedural defects in the  
11 removal of this case. Plaintiff does not contest the veracity of  
12 the proof of service described above, or contend that she did not  
13 receive written notice of the removal of the action as § 1446(d)  
14 requires. Accordingly, Plaintiff's motion to remand based on  
15 procedural defects in the case's removal is denied.<sup>2</sup>

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26 <sup>2</sup>Plaintiff improperly titled her reply brief to Defendants'  
27 opposition to her motion to remand a "Cross-Motion in Opposition to  
28 Motion to Void Removal to Federal Court." Accordingly, the Court  
denies this motion.

CONCLUSION

For the foregoing reasons, the Court denies Plaintiff's (1) motion for a temporary restraining order (Docket No. 9), (2) motion to remand (Docket No. 10) and (3) "Cross-Motion in Opposition to Motion to Void Removal to Federal Court" (Docket No. 18).

IT IS SO ORDERED.

Dated: 06/04/10



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CLAUDIA WILKEN  
United States District Judge